

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

March 13, 2014

- I. **CALL TO ORDER** - The meeting was called to order at 1:32 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present - Mike Owens, Chair (departed at 4:14 PM); Will Berkley; Carla Blanton; Patrick Brewer (departed at 3:45 PM); Mike Cravens; David Drake; Karen Mundy; Carolyn Plumlee; Frank Penn (departed at 3:22 PM); and Bill Wilson.

Planning staff members present - Chris King, Director; Bill Sallee; Barbara Rackers; Tom Martin; David Jarman; Kelly Hunter; Cheryl Gallt and Denice Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; Tim Queary, Department of Environmental Policy; Casey Kaucher, Division of Traffic Engineering; Tracy Jones, Department of Law and Bettie Kerr and Amelia Armstrong, Division of Historic Preservation.

- II. **APPROVAL OF MINUTES** – The Chair reminded the Commission members that the minutes of the January 30, 2014, and February 20, 2014, meetings were previously emailed to the Commission for their review; and if there were no changes, those minutes were ready to be considered at that time.

Action - A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 10-0 to approve the minutes of the January 30, 2014, and February 20, 2014, meetings.

- III. **POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

- a. DP 2013-29: HEADLEY, NIVEN & VANCE PROPERTY, LOTS 1, 2 & 3 (AMD) (3/13/14)* - located at 1500 Russell Cave Road and 295 West New Circle Road. (Council District 1) **(Vision Engineering)**

Note: The Planning Commission postponed this plan at their January 16, 2014 and February 13, 2014, meetings. The purpose of this amendment is to revise the development on Lot 1 and include Lot 2 in the development. The Planning Commission originally approved this plan on May 9, 2013, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Kentucky Transportation Cabinet's approval of access to Russell Cave Road.
10. Clarify restaurant seating to include outdoor patio area (and any related off-street parking).
11. Correct, delete and consolidate notes #9 - #13 to the approval of the Urban Forester.
12. Denote that the proposed construction access from Russell Cave Road cannot be built or utilized except with the issuance of a permit for Building 1.
13. Label existing and proposed access points to Russell Cave Road.
14. Denote: No building permit shall be issued for Building 1 until the existing access (#2) to Russell Cave Road is closed. The new access shall be constructed to the approval of the Division of Traffic Engineering and the Division of Engineering.
15. Signage for right turn only at access #3.

Note: The applicant has requested a continued discussion of this plan to ask for the removal of condition #12 of the Planning Commission's approval granted at the meeting held on May 9, 2013.

The Subdivision Committee Recommended: **Postponement**. There are concerns with the applicant's request to delete condition #12 that addresses the proposed access point to Russell Cave Road.

The Staff Recommends: **Disapproval** of this request, for the following reasons:

1. The original approval by the Planning Commission was appropriate and consistent with the intent of Article 21 of the Zoning Ordinance and the Land Subdivision Regulations in protecting public health and safety.
2. There have been no changes in the traffic patterns or volume in the area in the past 8 months that would justify the removal of the condition.
3. The proposed drive-through facility on Lot 1 heightens the safety concerns with the proposed access with both the Division of Traffic Engineering and the KYDOT.

* - Denotes date by which Commission must either approve or disapprove request.

Representation – Matt Carter, Vision Engineering, was present representing the applicant, and requested to withdraw DP 2013-29: HEADLEY, NIVEN & VANCE PROPERTY, LOTS 1, 2 & 3 (AMD).

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for withdrawal. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Mr. Penn and carried 10-0 to withdraw DP 2013-29: HEADLEY, NIVEN & VANCE PROPERTY, LOTS 1, 2 & 3 (AMD).

- b. DP 2014-13: GROWTH PROPERTIES (AMD) (5/4/14)* - located at 100 Goodrich Avenue.
(Council District 3) **(Vision Engineering)**

Note: The purpose of this amendment is to depict a single family residence at 100 Goodrich Avenue, the line separating it from the B-1 zone, and to revise plan notes.

The Subdivision Committee Recommended: Postponement. There are concerns regarding the suitability of the proposed single family use and the historic storm water flooding conditions.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Correct typographical errors throughout plan notes.
9. Restore access restrictions from previous note #11.
10. Discuss need to establish a finished floor elevation for proposed residence on 100 Goodrich Avenue.
11. Discuss possible 25' building line at 100 Goodrich Avenue.

Representation – Matt Carter, Vision Engineering, was present representing the applicant, and requested postponement of DP 2014-13: GROWTH PROPERTIES (AMD) to the March 27, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Penn, seconded by Ms. Plumlee and carried 10-0 to postpone DP 2014-13: GROWTH PROPERTIES (AMD) to the March 27, 2014, Planning Commission meeting.

- c. DP 2014-16: CHANCELLOR SUBDIVISION (THE SPRINGS) (AMD) (5/4/14)* - located at 2000-2020 Harrodsburg Road.
(Council District 11) **(Vision Engineering)**

Note: The purpose of this amendment is to redevelop Parcel C.

The Subdivision Committee Recommended: Postponement. There were some questions regarding the traffic impacts, storm water management and compliance with the tree canopy requirements.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Remove building envelope notation from parcel C-2.
12. Denote height of proposed buildings, in feet.
13. Clarify vehicle stacking area near proposed buildings.
14. Discuss storm water management and water quality measures.

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15. Discuss traffic circulation and parking conflicts.
16. Discuss need for traffic generation study.
17. Discuss drive-through speakers and related restrictions.
18. Discuss traffic circulation and possible prohibition of direct access to Mitchell Avenue.
19. Discuss traffic calming improvements for Mitchell Avenue.
20. Discuss timing of construction of deceleration lane.
21. Discuss compliance with tree canopy requirements.

Representation – Matt Carter, Vision Engineering, was present representing the applicant, and requested postponement of DP 2014-16: CHANCELLOR SUBDIVISION (THE SPRINGS) (AMD) to the April 10, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Brewer, seconded by Ms. Mundy and carried 10-0 to postpone DP 2014-16: CHANCELLOR SUBDIVISION (THE SPRINGS) (AMD) to the April 10, 2014, Planning Commission meeting.

- d. DP 2014-22: PARK HILLS SHOPPING CENTER (LOT 2) (AMD) (5/27/14)* - located at 3110 Pimlico Parkway.
(Council District 8) **(Barrett Partners)**

Note: The purpose of this amendment is to add a 3' landscape buffer along the eastern property line of Lot 2 and to reduce the space available for access and parking.

The Subdivision Committee Recommended: Postponement. There are some questions regarding the revised parking and access conflicts with the Final Record Plat, as well as conflicts with "on-the-ground" existing conditions.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Division of Waste Management's approval of refuse collection locations.
8. Clarify metes and bounds on property.
9. Denote construction access point location on plan.
10. Correct purpose of amendment note.
11. Addition of topography for Lot 2.
12. Clarify tree canopy and tree preservation information on area of amendment.
13. Clarify all dimensions on area of amendment.
14. Review by Technical Committee prior to plan certification.
15. Discuss the conflict with the revised access and parking with the note on the Final Record Plat.
16. Discuss inconsistencies with plan and existing parking spaces and drive aisles.

Representation – Nick Nicholson, attorney, was present representing the applicant. He said that this request was filed prior to obtaining the traffic study. They no longer feel comfortable with the submission and would like withdrawal DP 2014-22: PARK HILLS SHOPPING CENTER (LOT 2) (AMD).

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for withdrawal. There was no response.

Action - A motion was made by Mr. Penn, seconded by Ms. Mundy and carried 10-0 to withdraw DP 2014-22: PARK HILLS SHOPPING CENTER (LOT 2) (AMD).

- e. PLAN 2014-11F: TUSCANY, UNIT 10 (5/4/14)* - located at 1970 Winchester Road.
(Council District 6) **(EA Partners)**

The Subdivision Committee Recommended: Postponement. There were some questions regarding the need for a preliminary subdivision plan and the timing and construction of public infrastructure in the area.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.

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5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
9. Denote right-of-way width of Winchester Road at cross-section location.
10. Addition of building line along Meeting Street.
11. Discuss extension of Meeting Street and timing of its approval for construction.
12. Discuss access proposed to Winchester Road.
13. Discuss sanitary sewers necessary to serve lot.
14. Discuss need for preliminary subdivision plan.
15. Discuss Urban County Engineer's and engineer's certifications.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of PLAN 2014-11F: TUSCANY, UNIT 10 to the April 10, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Blanton, seconded by Mr. Brewer and carried 10-0 to postpone PLAN 2014-11F: TUSCANY, UNIT 10 to the April 10, 2014, Planning Commission meeting.

- f. DP 2014-4: LANSBROOK PLAZA SHOPPING CENTER (4/3/14)* - located at 3501 Lansdowne Drive.
(Council District 4) **(J. Kingston)**

Note: The Planning Commission postponed this plan at their January 16, 2014 and February 13, 2014, meetings. The purpose of this amendment is to add buildable area to building #3 and revise the parking area on that lot.

The Subdivision Committee Recommended: Postponement. The submitted plan filing does not appear to meet the limits of the variance approved in 2000 for this location.

Should this plan be approved, the following conditions should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Clarify existing parking per GIS photograph for building #3.
9. Clarify purpose of amendment note.
10. Revise note #6 to include reference to Art. 16 of the Code of Ordinances.
11. Clarify site statistics, and update restaurant seating statistics for building #3.
12. Review by Technical Committee prior to plan certification.

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting postponement of DP 2014-4: LANSBROOK PLAZA SHOPPING CENTER to the April 10, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Mundy, seconded by Ms. Plumlee and carried 10-0 to postpone DP 2014-4: LANSBROOK PLAZA SHOPPING CENTER to the April 10, 2014, Planning Commission meeting.

- g. **BOAR 2014-1: JOSEPH H. CLARK/JOSEPH P. CLARK** – an appeal of the denial of a Certificate of Appropriateness for changes to property located at 458 W. Third Street.

Staff Comments – Ms. Rackers said that the staff had spoken to the appellant, who requested postponement of **BOAR 2014-1: JOSEPH H. CLARK/JOSEPH P. CLARK** to the April 24, 2014, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

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Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 10-0 to postpone **BOAR 2014-1: JOSEPH H. CLARK/JOSEPH P. CLARK** to the April 24, 2014, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, March 6, 2014, at 8:30 a.m. The meeting was attended by Commission members: Carolyn Plumlee, Frank Penn, Will Berkley, Karen Mundy and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Chris King, Bill Sallee, Tom Martin, Jimmy Emmons, Traci Wade, Cheryl Gallt, Dave Jarman, Kelly Hunter, Barbara Rackers, Denice Bullock and Scott Thompson, as well as Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; Lieutenant David A. Lyons, Police; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

- Criteria:**
- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
 - (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
 - (3) no discussion of the item is desired by the Commission; and
 - (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
 - (5) the matter does not involve a waiver of the Land Subdivision Regulations.

- Requests can be made to remove items from the Consent Agenda:**
- (1) due to prior postponements and withdrawals,
 - (2) from the Planning Commission,
 - (3) from the audience, and
 - (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

- a. **PLAN 2014-12F: HOLLOW CREEK SUBDIVISION, UNIT 1 & WILLIAM SHELLEY SUBDIVISION, UNIT 2 (AMD)** (5/4/14)* - located at 1501 Russell Cave Road. (Council District 1) **(Wes Witt)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s).
 6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 8. Addition of new access easement to serve Lot 2.
 9. Addition of maintenance note 5-4(h)(1) for new access easement.
 10. Provided the Planning Commission approves a finding for Article 6-8(m) for use of an access easement.
 11. Addition of a note for reciprocal access and parking, or an access easement to serve Lot 2.
- b. **DP 2014-14: MILLER-BIRD COMMERCIAL PARK, UNIT 1-B (AMD)** (5/4/14)* - located at 189-199 Moore Drive. (Council District 10) **(Strand Associates)**

Note: The purpose of this amendment is to demonstrate eligibility for designation as a Flex Space project and to depict existing conditions on the site.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

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1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
 8. Division of Waste Management's approval of refuse collection locations.
 9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
 10. Provided that the Commission finds that this plan complies with the "flex space project" provisions of the B-4 zone.
 11. Correct note #3.
 12. Denote height of building on plan, in feet.
- c. DP 2014-15: FOUNTAIN PLAZA-EAGLE CREEK OFFICE PARK, LOTS 5 & 6 (AMD) (5/4/14)* - located at 151 and 161 North Eagle Creek. (Council District 7) **(Barrett Partners)**

Note: The purpose of this amendment is to add additional parking to the existing office development.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Label all existing and proposed easements.
10. Resolve the 25' floodplain setback conflict with dumpster enclosure.
11. Denote compliance with Article 19 of the Zoning Ordinance for Special Use Permit in the floodplain.
12. Clearly denote Phase II line.
13. Denote that no Phase II work shall begin until permit is granted in compliance with Article 19 of the Zoning Ordinance.

Mr. Sallee directed the Commission's attention to PLAN 2014-12F: HOLLOW CREEK SUBDIVISION, UNIT 1 & WILLIAM SHELBY SUBDIVISION, UNIT 2 (AMD), and briefly explained that the Commission must make a finding for Article 6-8(m) of the Land Subdivision Regulations, which would allow sole access via an access provided easement rather than via public or private street. He then directed their attention to DP 2014-14: MILLER-BIRD COMMERCIAL PARK, UNIT 1-B (AMD), and said that the Commission must also make a finding that this plan complies with the "flex space project" provisions of the B-4 zone. He indicated that the staff had previously distributed copies of both of these findings, just prior to today's hearing, for the Commission to review.

In conclusion, Mr. Sallee said that the items identified on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission, or the audience, in order to permit further discussion.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Mr. Wilson, seconded by Ms. Mundy and carried 10-0 to conditionally approve the items listed on the Consent Agenda, including the findings provided by the staff.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)

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- (b) citizen objectors (5 minute maximum)
- (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

1. DEVELOPMENT PLANS

- a. DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD) (5/7/14)* - located at 3100 Pimlico Parkway.
(Council District 8) **(GRW)**

Note: The Planning Commission continued this item at their February 13, 2014, meeting. The purpose of this amendment is to add a new restaurant with a drive-through facility. The Planning Commission originally approved this plan on December 13, 2012, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Denote as a "Final Development Plan" in plan title.
9. Identify B-6P/P-1 zoning boundary and denote 60' building line from that line.
10. Resolve owners' signatures for all lots affected.

Note: The Commission's approval has since expired. The applicant now requests a reapproval of this plan.

The Staff Recommends: Postponement. The applicant submitted a different mylar to the staff for certification a few weeks ago. The previously approved plan does not match the mylar recently submitted to the staff.

Staff Presentation – Mr. Sallee directed the Commission's attention to Park Hills Shopping Center, Lot 1, and said that the Commission had continued this item from their February 13th meeting due to the considerable amount of discussion that was generated on this request. He explained that the staff had distributed several items for the Commission to review, including the site exhibit submitted November 2012; the February 13, 2014, Planning Commission minutes; several email communications; and a letter from CMI Properties, with attachments, as well as the latest McDonald's site plan. He informed the Commission that the letter from CMI Properties was presented to the Subdivision Committee members on March 6th; however, the attachments were not included at that time. He noted that the CMI Properties letter, as well as the schematic of the site, is new information for the Commission to review.

Mr. Sallee explained that the subject site is located at the corner of Man o' War Boulevard and Pimlico Parkway, and has an address of 3100 Pimlico Parkway. He then said that the purpose of this amendment is to replace the non-operational Central Bank branch with a McDonald's restaurant on Lot 1. He reported that the Planning Commission had approved this request in late 2012; and at that time, that proposal had depicted the McDonald's restaurant, a reduction in the building line from 50' to 25' from the right-of-way of Pimlico Parkway, a dual drive-through facility at the rear of the restaurant, as well as off-street parking and internal circulation. He noted that, with the exception of the alterations along the rear of Lot 1, the remaining shopping center is not proposed to have any changes made.

Mr. Sallee said that, at the Commission's February meeting, the proposed alteration to the rear of Lot 1 is what led to the controversy over condition #10. He reminded the Commission that the staff had also presented a copy of the final record plat for this property; and that rendering depicted Lots 1 through 4, as well as a note pertaining to the reciprocal parking and access for all lots on the shopping center. He added that that note was placed on the plat to ensure there would be reciprocal parking and access throughout the shopping center.

Mr. Sallee directed the Commission's attention to several aerial photographs of the property and explained that the shopping center is located at the corner of Man o' War Boulevard and Pimlico Parkway, near that signalized intersection. He noted that the main access into the shopping center has one lane in and two lanes out, opposite Custer Drive. He added that there is a right-turn lane into the shopping center along Pimlico Parkway; and the left turn lane allows for some vehicle stacking, if necessary, into the center. He said that the subject property occupies the southeast corner of the shopping center, next to Lot 2, which is developed for an Arby's restaurant. He then said that there is a main drive aisle leading from Pimlico Parkway into the shopping center, allowing traffic to enter or exit each of these lots. He added that both of

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these lots also have a drive-through facility, as well as on-site parking, and noted that there is an access easement between Lots 1 and 2, which can allow traffic from Lot 1 to exit the shopping center back toward Pimlico Parkway through Lot 2. He also noted that there are two lanes exiting this shopping center, but the width of these lanes is not sufficient to provide two lanes.

Mr. Sallee said that, at the February Planning Commission meeting, the staff had identified that the shopping center was not constructed as it was originally approved by the Planning Commission in the 1980s. He then said that, since the shopping center was not constructed as it was originally approved, this has resulted in a design constraint for this proposed outlot development. He said that, due to this discrepancy, condition #10 ("Resolve owners' signatures for all lots affected") was added as part of the 2012 Planning Commission approval. He added that the applicant's submission, at that time, did not propose any type of amendment to the shopping center; but in reviewing the February 13, 2012 site plan submission, there was a change proposed to reflect what was actually constructed on the ground versus what the Planning Commission had approved in 1980. This situation is what led to condition #10 becoming part of the Commission's approval in 2012.

Mr. Sallee said that in January of this year, the applicant had submitted the 2012 development plan to the staff for certification; however, upon the staff's review, the applicant had not resolved condition #10 within the one-year time period of the proposed developed plan. The applicant then submitted their newest version of the development plan, and the newest version depicts the dumpster at a different location. The traffic circulation is still similar to the original version, but now there are two connections into Lot 2 and one connection to the shopping center.

Mr. Sallee said that the applicant had submitted a request for reapproval of this development plan; but due to the discrepancy of which version the applicant was asking to reapprove, the staff recommended postponement. He then said that, shortly before the February Planning Commission meeting, the staff received clarification that the applicant was asking for the newest rendering depicted on the submitted mylar version to be given consideration.

Mr. Sallee said that the staff had distributed the Capacity Assurance Program information; and confirmed that this site does have sewer capacity for the general area. He then said that the staff had also noted that there is a withdrawal from this sanitary sewer, and even though the staff is not certain, it is possible that the proposed use is what that withdrawal represents. He added that there is significant capacity to allow the use on this property to change from the bank to a restaurant.

Mr. Sallee said that the staff received a letter from the shopping center, who objected to the proposed access to the Arby's restaurant, as it was being shown at the February meeting. He said that the shopping center owners had noted that there are very few McDonald's restaurants that have sole access internally through a shopping center, but rather they have their access connected to a collector or an arterial street. He then said that the shopping center owners also stated that they were aware of the problem that the on-ground conditions do not match what was approved by the Commission in the 1980s, and they had indicated that they have hired a contractor to resolve these differences with what was approved and what are on the ground conditions.

In conclusion, Mr. Sallee reported that the staff believed that the development plan that is before the Commission is an approvable plan, subject to the conditions listed on today's agenda. He said that the applicant has requested that condition #10 be removed; whereas, the shopping center owners are requesting that condition #10 be retained. He then said that the staff believed that the proposed development plan can be approved, subject to the conditions listed on today's agenda, deleting condition #10.

Planning Commission Questions – The Chair asked if the shopping center owners are working with a contractor to resolve the issues pertaining to the discrepancy along the back of Lot 1. Mr. Sallee indicated that, according to the recent letter from the shopping center owners, in 2012 they were aware of the inconsistency with the on-ground conditions; and they have hired a contractor to construct the parking spaces and the two access points on Lot 3 per the requirements of the 1980s approved development plan. The Chair asked if the 1980s plan is still viable. Mr. Sallee said that, with the plan that is now proposed, there are two connections proposed out of Lot 1. One is through a connection at the rear of the property and the second is through Lot 2. He said that the traffic could presumably exit the lot through the Arby's lot or through the shopping center. The Chair said that, solving the on-ground problem of the shopping center, it would not provide access at the rear of Lot 1. Mr. Sallee said that, if the on-ground conditions were constructed in the fashion it was originally approved, the connection could be made and the dumpster also could be relocated.

Representation – Chris Westover, attorney, was present, representing the Pimlico Parkway McDonald's restaurant. She explained that this is a development plan amendment to allow the construction of the McDonald's restaurant on Lot 1. She then said that the shopping center controls Lots 2 and 3, but her client

owns Lot 1. She noted that Lot 1 is land-locked without the reciprocal parking and access easements on Lots 2 and 3, and it is important to keep this in mind as the Planning Commission hears testimony concerning the traffic impact from the opposing side.

Ms. Westover explained that the Commission had requested that they meet with the opposing side, and they did present another amendment to Lot 1 that could have addressed these concerns; however, that proposal (DP 2014-22) was withdrawn at the beginning of today's hearing. She explained that DP 2014-22 had proposed to amend the shopping center by closing off the access between Lots 1 and 2, providing landscaping and creating a dual access along the property line at the rear of Lot 1. She said that they believed that both parties were very close to an understanding, and went ahead and scheduled another meeting on March 6th. However, shortly before that meeting, she received a phone call from the opposing side's new attorney, requesting the meeting to be canceled and for the request to be postponed today. She indicated that their request was denied, and the meeting continued to take place. Unfortunately, they were unable to make any progress on this matter.

Ms. Westover said that her clients have tried to negotiate this difficult situation since they purchased the lot in 2011; but they have not been able to bring the shopping center to the table or make a commitment, so her clients are presenting the Commission with the February 13th version for their consideration. She said that they are in agreement with the staff's recommendations and asked to delete condition #10. She explained that their proposal can be done entirely on Lot 1 and there is no need to make any alterations to the shopping center's property, which voids conditions #10. She asked that the Commission reapprove this request, subject to the conditions listed on today's agenda, deleting condition #10. She noted that Rod Rosenstein, the applicant; Roderick Saylor, GRW; and Jon Barnard and Jeff England, McDonald's restaurant, were present on behalf of McDonald's to further discuss this proposal.

Mr. Saylor said that they had presented the site plan (their version #21) to the shopping centers owner's, explaining to them that the access between Lots 1 and 2 would be removed. He then said that the reason they were not requesting approval for their version #21 is due to problems in obtaining the shopping center owners' permission for an off-site construction easement. He said that they believe that plan #21 is a better fit for Lot 2; but without the cooperation of the shopping center, that proposal is not possible, which is the reason they are requesting the Commission to consider the February 13th version. He explained that the February rendering depicts two accesses between Lots 1 and 2, as well as a closed drive aisle between Lots 1 and 3. He added that the trash enclosure will be on the subject property, close to Lot 2, near the rear property line. He said that since the drive aisles are not part of this development, and with the gap between Lots 1 and 3, no adjustments can be made without permission.

Directing the Commission's attention to a series of photographs, Mr. Saylor said that traffic will flow where there is the least resistance, and for this site, there will be two accesses between Lots 1 and 2, as well as a rear access toward the shopping center. He indicated that there is a curb cut at the rear of the site, and a drive aisle on Lot 2 that is more than 24' wide, which does provide enough room for two-way traffic movement through this area.

Ms. Westover said that this is a stand-alone lot, and the development that they are proposing was reasonable and is in compliance with the existing B-6P zone. She then said that, for four years, this lot has been vacant. There has been no economic development, and they are trying to place a reasonable, lawful use on the property that is allowed. She added that the February 13th rendering is appropriate, and would allow the full development entirely on Lot 1 without needing the signature of the shopping center owners. She respectfully requested that the Planning Commission approve the February 13th development plan submission, subject to the conditions listed on today's agenda, deleting condition #10. She indicated that on the previous development plan, a note was added, stating that improvements will pertain to a particular lot and no signatures are required. She said that this is consistent with past practices throughout this jurisdiction, and that is what they are requesting this action. At this time, Ms. Westover reserved the right to respond to any of the opposition's comments.

Opposition's Comments – Nick Nicholson, attorney, was present, representing the Park Hills Shopping Center. He said that he had distributed their proposed findings for disapproval of this request, per Article 21-4(e) of the Zoning Ordinance, which is based on health and safety reasons. He said that, at the February meeting, they were responding to the concerns as to how this proposal would greatly impact the shopping center and Arby's lots. He then said that, upon reviewing the findings from Stantec, they realized that there were more widespread issues with this location than they had originally perceived. He added that, due to the impact of the entire shopping center, they believe the owner's signature should be required for this proposal and requested that condition #10 be retained.

Mr. Nicholson said that this parcel is 0.71 acres in size; and a McDonald's restaurant is too intense for this location. He then said that the traffic generator is around 2,000 trips per day for fast food restaurants, and they believe that would be too concentrated for this parcel. This proposal violates Article 12-1 of the Zoning Ordinance, as well as the private easement that is in place on this property. He said that they believe this development plan is ignoring the reality as to how intense this use will be, or how the increase traffic will

* - Denotes date by which Commission must either approve or disapprove request.

impact the other 26 tenants in the shopping center, as well as the nearby neighborhoods. He then said that the spillage created from this use will cause an additional impact on the intersections of Custer Drive and Pimlico Parkway, and Man o' War Boulevard and Pimlico Parkway.

Directing the Commission's attention to a PowerPoint presentation, Mr. Nicholson explained that the typical McDonald's site is 1.37 acres in size, the building dimensions are 175' by 340', and they have 70 parking spaces. He said that when overlaying these dimensions onto this subject site, it clearly shows that there is not enough room to maintain the typical McDonald's layout. He explained that, in reviewing other Lexington McDonald's locations, the average lot size is 1.352 acres in size, with 56 parking spaces. Having a double lane drive-through facility, which is being proposed for this required site, increases the size of the lot to 1.45 acres, and reduces the parking to 50 spaces. He said that the subject site is only 0.71 acres in size, with 20 on-site parking spaces. This is half of the typical McDonald's layout. He then said that, on average, there are 15 to 20 employees per shift, with a total of 75 employees for the restaurant. This amount of employees needed per shift will take up the on-site parking, which would force customer parking over to the shopping center parking lot. He said that the customer would need to walk through the drive aisles, over to the McDonald's side entrance, not the main entrance.

Directing the Commission's attention to a series of photographs, he explained that these photographs document the amount of traffic in the shopping center on a Saturday during the PM hours. He said that, at the Commission's last meeting, it was noted that 60 percent of the McDonald's sales are from the drive-through traffic. As it was noted earlier in this meeting, traffic will take the path of least resistance. He said that, with the current submission, traffic will not only be able to exit the shopping center through the Arby's lot, but traffic will be able to exit to the center of the shopping center at the rear by using the Arby's drive-through lane. He then said that, once cars start to stack, this will not only impact the drive aisle, but it will also impact the Arby's drive-through lane. He noted that, on the previously approved development plans, landscape median was shown, and the access to the Arby's lot was closed. That design prevented this type of traffic impact on the neighboring lots. He said that they are concerned with the traffic crossing the Arby's lot or traveling the drive aisle to the main exit at Pimlico Parkway. Simply put, the egress situation is untenable; and to compound the issue, there is a problem with 18-wheelers entering and exiting Park Hills Shopping Center. He said that the turning radius into the parcels is not wide enough, which forces the larger trucks to park in the shopping center parking lot, taking up needed parking space.

Dr. Tom Creasey, Stantec, was present on behalf of the applicant. He explained that their services were retained to perform a preliminary assessment to address the concerns with public safety and traffic congestion that is associated with a high-volume fast food restaurant. He said that they had concluded that there are 8 points of concern with this site, 7 of which are external to the site. He then said that the left turn lane on Man o' War Boulevard going onto Pimlico Parkway is less than 100 feet long and only allows up to five cars to stack. Anything over this begins to back up into the transition area and on to Man o' War Boulevard. He added that it does not take many vehicles trying to enter the shopping center to create a backup on Pimlico Parkway or spillage onto Man o' War Boulevard. He said that, reversing the direction back toward Man o' War Boulevard, there are two left turn lanes on Pimlico Parkway, with a capacity for about ten cars. When adding more traffic from a high volume use, it would not take much to back up both the turn lanes in either direction. He said that there is less than 300 feet between the Custer Drive/Pimlico Parkway intersection and Man o' War Boulevard, which is a shorter distance than what is found in downtown Lexington. This is not adequate spacing, and backups will occur heading out towards Man o' War Boulevard, possibly blocking the intersections. He said that they believe a detailed traffic study should be performed for this area to quantify the extent of the impact that will occur in this area.

Dr. Creasey said that they are also concerned with the bike and pedestrian movement in this area. He then said that with a high-volume fast food chain, it would bring more movement to this area, creating potential hazards. This site is surrounded by residential homes and there is no pedestrian crossing across Pimlico Parkway. He said that people will not walk to the signalized light to cross Pimlico Park to gain access to the McDonald's restaurant; but, rather, they will cross Pimlico Parkway in front of traffic. He added that during their site visit they had witnessed this very action, which is demonstrated in the photographs and the video. He said that, due to the sight triangle issues on the corner lot with the landscaping, the traffic coming off Custer Drive must pull out into the oncoming traffic when trying to exit.

Dr. Creasey said that the curb radius at Man o' War Boulevard and Pimlico Parkway is not sufficient in size, especially for the larger delivery trucks. He then said that this issue forces cars to back up on Pimlico Parkway to allow more room for the larger trucks to come onto Pimlico Parkway from Man o' War Boulevard. As a result, the left turn storage is being reduced to go north onto Man o' War Boulevard, creating operational issues for the larger vehicles.

Dr. Creasy said that, with regards to the ingress and egress into Lot 1 and parking, the typical McDonald's site allows up to 70 parking spaces; and what is being proposed is a fraction of that number. The majority of the customers would need to park in the common area on the shopping center property. He said that this

creates a concern with pedestrian movement crossing circulation aisles to gain access to a business. He then said that this proposal would create this type of situation.

Dr. Creasey said that the traffic traveling north on Man o' War Boulevard that is turning left onto Pimlico Parkway currently does back up, particularly in the PM peak hours. He then said that, with this proposal, the left turn storage issue could also happen at this location. There is a sufficient amount of room to extend the left turn lane down Man o' War Boulevard, which would increase the storage; but it may not be cost effective.

Dr. Creasey said that this is only the preliminary assessment, and they have identified several issues pertaining to traffic congestion and public safety with this proposed use. He indicated that the data collected shows an average of 40 accidents a year; and with a high-volume traffic generator being added, it is anticipated that the number of accidents would increase in this area. Concluding his presentation, Dr. Creasey presented a video to the Commission and gave a brief summary of the potential issues with this proposed development for pedestrians and vehicular traffic.

Mr. Nicholson said that, based upon the evidence and testimony, this proposed development violates the intent of Article 12-1 of the Zoning Ordinance, which is the intent provision for the B-6P zone. He then said that Article 21 of the Zoning Ordinance ensures traffic safety by designing such commercial areas as to provide safe and convenient access to the site and adequate off-street parking for automotive vehicles. This is not the case for this proposed development. He said that there should be a safe and convenient ingress and egress to a development by effectively separating the vehicular from the pedestrian traffic, both within the commercial area and on the adjacent public right-of-way. The evidence presented to the Commission had demonstrated that there will be a problem with the ingress and egress, and will worsen the pedestrian safety by adding a McDonald's restaurant at this location.

Mr. Nicholson said that Article 21-1 of the Zoning Ordinance also requires that any adverse effect from any such commercial area upon any adjacent land uses be minimized, and should provide a pleasant environment for the shopping/working experience. He then said that they believe that, by adding more than 2,000 trips per day, it will create more traffic congestion in an area that is not designed for this type of intense use. He indicated that this parcel was created and used by a bank, not this type of use; and there would be a difference in trip generator for the AM and PM peak hours.

Mr. Nicholson added that Article 21-1 of the Zoning Ordinance also protects the investment of the existing commercial concentrations by providing the basis for convenient, stable, commercial development through the application of sound planning principles. He said that there is a reason why the McDonald's corporation recommends having up to 1.37 acres, with a maximum of 70 parking spaces; and that is to provide a properly laid out design for their McDonald's restaurants. He said that, on average, the other McDonald's restaurants have followed suit; but the size of this lot is approximately 0.71 acres, which would result in the remaining needed space being taken from the Park Hills Shopping Center, at the sacrifice of the other tenants. He then said that they are not opposing the development of the parcel, but they are opposed to this type of intense use at this location.

Nathan Billings, attorney for the Arby's restaurant, was present. He said that he has been involved in this case for about 11 months; and except for the occasional letter, there has been no attempt to resolve these issues from their perspective. He then said that Mr. Nicholson had given the Commission technical findings as to why this development plan should be denied, but he would like to give the Commission the practicality of why this request should be denied.

Mr. Billings directed the Commission's attention to the overhead projector, and said that this land was never constructed as it was approved in 1980s, which has created a problem. The ironic thing is that the shopping center owner still does not want to bring this area into compliance with the approved 1980s development plan. The shopping center owner wants to retain the accesses between the Arby's lot and the proposed development; but they do not want to provide a relief valve to the shopping center, which is very critical to this case.

Mr. Billings said that, even though the owners had met to try to resolve this issue, at the end of the day, their proposals do not fix the problem. He then said that either the McDonald's restaurant will need to keep directing the outflow traffic back toward the shopping center, or their traffic will cross the Arby's lot. As it is proposed, the McDonald's development completely redirects the traffic back into the McDonald's lot, at which time the outgoing traffic can cross the Arby's lot in two places, versus heading back toward the roadway that was designated for outgoing traffic. Mr. Billings said that the traffic problems on the major roadways had been discussed, but the existing traffic problem within the shopping center was not, and it is a safety hazard. He indicated that there are no traffic calming devices within the shopping center; and by adding more cars, it will create higher traffic congestion. Ultimately something must be done to fix this situation. He noted that since there is no relief valve for the traffic to exit toward the shopping center, they believe this proposal should be denied until the shopping center matches what was approved by the

Commission in the 1980s. He said that, even if there was a backup, the relief valve would help traffic flow back to Pimlico Parkway through the shopping center.

In conclusion, Mr. Billings said that, with the reasons provided by Mr. Nicholson, they believe that findings could be presented, stating that the current proposal should be denied, and allowing further discussions between the parties to reach a resolution. However, should the Commission approve the proposed development plan; an agreement with the Arby's lot, the Park Hills Shopping Center and the applicant must be reached to find a tenable solution.

Planning Commission Questions – The Chair asked for comments from the Division of Traffic Engineering. Casey Kaucher said that, back in the 1980s when this site was originally developed as a bank, the traffic generator for that particular use was high and very similar to today's McDonald's restaurant. She then said that, when comparing the daily trip generator and the weekend trip generator, during the week, a McDonald's restaurant would have a higher traffic count during the AM and PM peak hours; however, on a weekend, a bank would generate a higher traffic volume during its peak hours.

Ms. Mundy confirmed that the Division of Traffic Engineering does not have a problem with the short distance between Pimlico Parkway and the Arby's lot that is used for ingress and egress. Ms. Kaucher said that that is correct and explained that there is a median between the ingress and egress lanes. She then said that the access from the Arby's lot is a right-turn only to Pimlico Parkway; and if there is any backup, the traffic would be on the Arby's lot, not Pimlico Parkway.

Petitioner's Rebuttal – Ms. Westover said that she would like for Mr. Saylor and Mr. Bernard to speak first on the comments that have been made, then she would make her closing comments. Mr. Saylor clarified that a car can not turn left into the Arby's lot from the main shopping center entrance due to the raised median located in the center. He said that, with regards to traffic crossing the Arby's lot at the rear, that access will be an exit only, not an entrance. He then said that signage would be placed in this area to direct the traffic, and would help "train" the drivers navigate through the shopping center.

Mr. Bernard said that this McDonald's is an infill project, and they are not expecting it to be a "big boomer." He then said that they are expecting mostly drive-through traffic in the AM and PM peak hours, and they have already pre-planned for their delivery trucks to come during their off hours, between 11:00 PM and 5:00 AM. He added that, as far as the traffic stacking, the vehicles will circle the building and exit through the shopping center. The McDonald's staff, which will be running this location, are willing to work with the community.

Planning Commission Questions - Mr. Wilson asked how the people will gain access to McDonald's. Mr. Bernard explained that the traffic coming off Pimlico Parkway into the shopping center can not make a left turn into the Arby's lot due to the raised median in the center of the drive aisles. He then said that the traffic will need to travel the drive aisle through the shopping center toward the McDonald's lot. Upon entering the lot, the customers can either park their cars and walk into the building or use the drive-through service. He added that vehicles can exit two ways. One way is through the drive-through lane and the second is crossing the Arby's lot.

Mr. Wilson said that, from their perspective, traffic would travel back into the shopping center and not make a left turn into the Arby's lot from the main entrance. Mr. Bernard said that it would be impossible since there is a median in the center of the entrance and exit lanes of the shopping center. Mr. Wilson said that a comment was made that traffic could enter the McDonald's lot at the rear by crossing over the Arby's lot, and asked if it was their opinion that the traffic would instead come straight down to the main entrance of the lot. Mr. Bernard said that that access will be an exit only for both larger and smaller vehicles.

Mr. Berkley said that the applicant is considering this location to be an infill project and asked if they have any statistics to show the number of repeat customers. Mr. Bernard said that a person's breakfast and dinner becomes very routine and planned, whereas lunches are very random. He indicated that they are expecting more repeat customers from the residential area versus traffic along Man o' War Boulevard.

Petitioners Rebuttal (cont.) - Ms. Westover said that she found it deeply ironic that the shopping center owners are the one who are complaining the most about this development when her clients have proposed a layout for a rear access point. She then said that the owners are unwilling to work with her clients, even though the shopping center had submitted and then withdrew a similar proposal; showing the same location for the access point. The owners of the shopping center should not have it both ways. She said that the time has come to ask the Commission to approve this development plan, adding that it meets every provision of the Zoning Ordinance and every other applicable requirement that is entirely on their lot. She then said that Arby's has a problem with this access; but respectfully, Arby's is a tenant of the shopping center. Therefore, they have an issue with the shopping center and that would need to be worked out with the shopping center.

Ms. Westover said that the shopping center had spoken to the high intensity of this use; but one can't help wonder, if the McDonald's restaurant were to be built on the shopping center lot, the same argument would

be occurring. She then said that the fact is, the entire shopping center is zoned B-6P, and the type of uses permitted in this zone include fast food services. She added that, when the zone change was granted in the 1980s, that was the time to place conditional zoning restrictions on the development plan. She said that, as for the reciprocal access easement that was granted, it is reasonable to assume that the general access easement would be based on normal development allowed under this particular zone. She then said that they are doing everything by the book, and they have repeatedly tried to reach out to the shopping center owner, without success. They believe that this proposal is appropriate for this area.

Ms. Westover said that, if the McDonald's restaurant placed their entire development where the former Central Bank building is located, they would not need to amend the development plan or come back to the Commission for approval. She then said that her clients could obtain a building permit and a Certificate of Occupancy to move forward. She added that, at this stage of the development, it doesn't make sense to argue over the intensity of the use when those decisions were previously made in the 1980s. She said that the Division of Traffic Engineering had stated that they do not see a problem with this type of use; and they also said that this type of use is no different than having a bank at this location. She then said that the Division of Planning has also given this amendment a recommendation of approval. In closing, Ms. Westover said that for all of the reasons previously mentioned, she requested approval of this request, subject to the conditions as presented by the staff, deleting condition #10.

Planning Commission Questions – Ms. Mundy asked, other than the shopping center lot, if Lot 1 is the only other lot that is privately owned. Ms. Westover replied affirmatively and said that, in the 1980s, the shopping center previously owned Lot 1; and in 1981, the shopping center owners filed a subdivision plat to subdivide the parent tract to create Lot 1. She then said that it was at that time the reciprocal parking and access notes were added to the development plan. She added that, had the shopping center owner wanted to restrict the types of uses, parking or access, that decision should have been made at that time. Ms. Mundy then asked if the reciprocal parking and access note is important to this lot. Ms. Westover said that that note is essential to this development; otherwise, the lot can not be developed and will remain unused and vacant.

Opposition's Rebuttal – Mr. Nicholson said that they did not claim that traffic could turn left into the Arby's lot through the access point near the shopping center entrance. That is the whole point to their opposition. He then said that the incoming traffic will need to come through the shopping center to enter these lots.

Mr. Nicholson said that he found it very interesting that the applicant is classifying this site as an infill development – particularly considering that the lot is in a 15-acre shopping center, within a residential area, and on the outermost connector street in Lexington. He then said that the site is near two major arterial roads, Man o' War Boulevard and Alumni Drive. The traffic is constantly flowing, with up to 3,000 cars traveling on Man o' War Boulevard and up to 7,000 cars traveling on Pimlico Parkway. He added that he does not consider this site to be an infill project, and he does not believe that the franchisee wants to hear that they are trying to minimize their profit by reducing the number of trips that could come to this McDonald's.

Mr. Nicholson said that, with regard to the access easement, it is absolutely vital to this development. However, an easement must be used at the intensity that it was designed to hold. He then said that if this McDonald's were to utilize the 2,100 square-foot building, they would not be here today. This vacant building is almost 4,000 square feet in size. He said that this is a much larger building than what was contemplated at the time this parcel was subdivided. They believe this type of use is much higher than what was intended, and this type of use will overburden the access easement. He said that McDonald's will be using all of the access points without giving the shopping owner compensation, and their traffic will be spilling over into the shopping center's parking lot. He then said that the tenants in the shopping center will be paying for the upkeep of the shopping center and the common area maintenance; McDonald's will not.

Mr. Billings said that, with regard to the reciprocal parking and access agreement, the applicant wants the benefit of using the other lots for traffic flow, but they do not want the traffic flow through their lot. He then said that, in reviewing the 1980s approved development plan, there was an approved access point at the rear of the lot. He added that the shopping center and the applicant had submitted an amended development plan showing that rear access point, but both parties withdrew their request. He indicated that McDonald's does not want the access easement that was originally approved on the 1980s development plan.

Staff Rebuttal – Mr. Sallee explained that the standards for the parking requirement in the B-6P zone are the same for the allowable uses. He said that for a community shopping center, such as this site, the requirement for a new development plan is that parking is to be provided at a ratio of 1 parking space for every 250 gross square feet of floor area. He then said that the McDonald's building is approximately 4,200 square feet, which will require 17 parking spaces. He added that, currently, the outlot is providing 21 parking spaces, the applicant is proposing 22 parking spaces, and the currently approved development plan for the site is showing 28 parking spaces.

Planning Commission Questions – Ms. Plumlee asked if it would be beneficial to have an “exit only” at the rear access point. Mr. Sallee said that that would not be a problem, provided that the dumpsters were relocated. He then said that it would be beneficial to have another access point; but in order for the dumpster trucks to service this lot, the applicant would need the approval from the Division of Waste Management. Ms. Plumlee then asked if the access would be an “exit only.” Mr. Sallee said that it does not appear that that access needs to be an entrance.

The Chair asked if it is the staff’s opinion that this is an approvable plan. Mr. Sallee replied affirmatively. He said that the on site parking requirements have been met, and the Commission had previously approved a different version of this development plan for this site.

Referring to the rendering, the Chair asked who controls the area behind the dumpster that appears to be green. Mr. Sallee said that most of the area is controlled by the McDonald’s lot, and there is, perhaps as much as grass and curb on the shopping center lot. The Chair then asked if the shopping center would need to give approval for an exit to be provided at the rear. Mr. Sallee replied that presumably that would be the case, adding that the access is shown on the approved development plan from the 1980s; but that access does not exist in the field.

Mr. Berkley said that that rear connection between the two lots does not exist, but all of the requested entrances and exits are on the ground. Mr. Sallee replied affirmatively. Mr. Berkley asked if nothing would be altered that is not already on the ground or what was approved a year ago. Mr. Sallee replied that was correct. He said that what the Commission is reviewing at today’s hearing is a different version of the previously approved development plan. Mr. Berkley asked if the exits and entrances are the same on both versions. Mr. Sallee explained that one of the access points is the same, whereas another access point has shifted slightly, and one has been removed.

Mr. Drake said that he is surprised that a commercial development, such as this, would welcome a traffic impact study. He understands that the traffic is not constant; but given the amount of discussion and evidence presented, there is some traffic congestion in this general area. He asked if there is a possible resolution, concerning the traffic problems, with the shopping center owners to accommodate the interest of all parties involved. Mr. Nicholson said that they want to stress that they are opposed to the use of the property as a McDonald’s restaurant. They believe this type of use is too intense for this location. With that being said, should all parties meet and come to an agreement on a new design for this site, there could be a solution; but at this time, they believe there is no solution with the current development plan submittal. He added that the Planning Commission does have the authority to disapprove a request based upon the issues that have been raised with safety and welfare.

Mr. Wilson said that Mr. Billings had stated that the lack of an exit on the McDonald’s property was the crux of the problem. Mr. Billings said that, legally, there is a development plan that was previously approved by the Commission that requires all parties to “play nice” with each other. He then said that the current development plan is saying that the applicant has to play nice, but they don’t have to create an additional access to relieve their own traffic flow out of the site. He added that from a practical, legal and common sense, the current proposal does not make sense. He said that the applicant should not be allowed to create a new curb cut without creating an additional curb cut to prevent a potential traffic jam. He then said that the dumpster can be relocated to create the new curb cut as it was originally approved in 1980s. For everyone’s benefit, the new relief valve should be constructed.

Ms. Mundy said that it was just established that the applicant does not own the portion of the land where the new ingress and egress cut could be constructed. Mr. Billings said that the applicant may not own that portion of the lot, but they are subject to the development plan. Ms. Mundy said that to construct the access would require the applicant to obtain signatures. Mr. Billings replied that, according to what the Commission approved in 2012, signatures are required because the curb cut does not exist on ground. He further said that, if this current version were to be approved, a reciprocal access agreement would be required to create the new curb cut. Ms. Mundy asked, as one of the three parties involved, why his client isn’t playing in the same sand box. Mr. Billings said that his client agreed to both of the proposed development plans that were previously withdrawn, and they are now in the middle of a dispute. He then said that the both withdrawn plans would have worked perfectly; and they are trying to find a solution that will save his client’s business, while, at the same time, help bring the McDonald’s to this area. He added that his client had stated at the last meeting that his sales increase when there is a McDonald’s next to his restaurant.

Closing Comments - Ms. Westover said that her clients would still be required to obtain the signatures from the other parties since the new curb cut would require off-site improvements to be made. She then said that the shopping center has been unwilling to work with her clients and allow the additional work to be done. She added that the two access points to the rear were very close to what the shopping center had proposed on the 1980s. Needless to say, unless the shopping center cooperates, they are in a dilemma. She said that they are concerned with having this request postponed again, or having the plan approved, with

condition #10, could only delay this further, and the lot sits vacant longer. She requested that the Commission approve this request without condition #10.

Mr. Nicholson said that, should the Planning Commission make an enforcement action, his client would be required to make that curb cut, since there is an approved development plan that is not in compliance with what exists on the ground. He added that they are willing to make those changes and the Commission can force his clients to make those changes. With regard to the comment about all parties "playing nice," the previous attorney(s) involved were lobbying threats and did not play nice from the beginning. He said that his firm did not respond to those accusations, and felt that those requests were not dignified.

Planning Commission Questions – Mr. Berkley said that it was mentioned that the shopping center owners would abide by the approved development plan, but that would require temporary easements off site. Mr. Nicholson said that the current version does not require the curb to be cut; but they will if they are required to cut the new curb, and they are willing to make those changes. Mr. Berkley asked if that is all that would be required. Mr. Nicholson said that this is a "10 pounds of flour in a 5 pound bag" situation. Ms. Westover said that there is a world of difference for someone to say one thing in front of the Commission and actually do what they said. She then said that the next question would be when would it be done and how it would be done. They would still be held hostage to another entity until those changes were made on the ground. This is why they are requesting the Commission to approve the current version of the development plan - in order for the entire development to be solely on their lot. She added that, should the current version be approved, and the shopping center owner wants to discuss other things, that would be fine. However, her client needs some type of certainty to be able to move forward without placing additional hardship on them.

Mr. Penn asked, since this is a development plan continuation from the February meeting, if members who were not present should take part in this motion. Ms. Jones said that, unless those members reviewed the tape, they should abstain from voting on this case.

Mr. Drake requested that for the Commission's options be reviewed. The Chair explained that the Commission is currently reviewing DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD), which is on the table and was continued from the February, 2014 meeting. Mr. Sallee further explained that DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD) was previously approved, subject to the 10 listed conditions on today's agenda. He said that the applicant has requested that the Commission reapprove the newest development plan, subject to the conditions listed on today's agenda, deleting condition #10; and the opposition is requesting that the Commission disapprove the development plan request, subject to the findings they had presented.

Mr. Berkley said that the Commission is in an odd position, and he is not sure if it is their place to interpret what was intended with the reciprocal access and parking agreement; and it is unfortunate that this has gone on for this long. He then said that he believed that this is an approvable plan, and the applicant is proposing the entrances and exits as they exist on the ground today. He added that, there is nothing to say, should the Commission approve this development plan, all parties can come together and resolve their differences through a new design that may work better.

Mr. Wilson noted that he agreed with Mr. Berkley's comments, and said that he had pushed for all parties to meet and try to resolve this issue. However, since no one wants to play together in the sand box, the Commission must make a decision. He then said that the applicant has done what they were supposed to do, and for the most part, Arby's has not really complained about this proposal. He added that he does have concerns with the traffic problems; and with great respect to the Division of Traffic Engineering, this area is going to be a mess. With that being said, he believes the applicant has done everything to try to get everyone together, but it has not worked.

The Chair concurred with both Mr. Berkley and Mr. Wilson and felt that the Commission is playing "playground monitor" at this point in time.

Action - A motion was made by Mr. Berkley, seconded by Ms. Wilson and carried 10-1 (Drake opposed; Brewer and Blanton abstained) to approve DP 2012-105: PARK HILLS SHOPPING CENTER, LOT 1 (AMD), subject to the conditions listed on today's agenda, deleting condition #10.

Note: A recess was declared by the Chair at 3:22 p.m. and the meeting re-convened at 3:29 p.m. Mr. Penn departed the meeting.

- b. DP 2014-12: JAMES W. ATKINS PROPERTY (5/4/14)* - located at 3939 Bates Creek Road.
(Council District 4) **(Vision Engineering)**

The Subdivision Committee Recommended: Postponement. There are questions regarding the traffic circulation throughout the property, as well as the turning radius near the bank drive-through at the rear of the property.

* - Denotes date by which Commission must either approve or disapprove request.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Discuss note #17 and the need for additional timing information.
11. Discuss need for pedestrian access to Bates Creek Road sidewalk.
12. Discuss extent of improvements to Wilson-Downing Road and need for additional island(s).
13. Discuss internal circulation conflict areas.
14. Discuss open area/patio adjacent to proposed coffee shop.

Staff Presentation – Mr. Martin presented the final development plan for the James W. Atkins Property, located at 3939 Bates Creek Road and recently rezoned to a Neighborhood Business (B-1) zone. He directed the Commission's attention to the rendering and oriented them to the surrounding area and street system. He said that the subject property is located at the corner of Bates Creek Road and Wilson-Downing Road, and will have direct access to the site from Wilson-Downing Road. This access will be directly opposite the access point to Bates Creek Shopping Center. He then said that the total buildable area proposed on this site is approximately 4,789 square feet, of which 3,021 sq. ft. would be used for a branch bank and 1,768 sq. ft. would be used for a coffee shop. He pointed out on the rendering that this site would be partly located in a floodplain, next to the West Hickman Creek, and indicated that the FEMA preliminary studies have been completed, as part of the site evaluations already performed. He said that the applicant will be required to use fill to elevate this property out of the regulatory floodplain, and proposes to build a floodwall along the rear of the development.

Mr. Martin said that, just prior to the Subdivision Committee meeting, the applicant did submit a revised development plan to the staff. However, at that time, the staff did not have enough time to properly review that submittal. Since that time, the staff was to fully review the latest submission, and can now offer the Commission a revised recommendation on this final development plan. He reported that the applicant did address the initial concerns regarding the traffic circulation throughout the property, as well as the turning radius near the bank drive-through proposed at the rear of the property. He explained that traffic circulation for the rear of the site will involve a one-way movement; and to help control the one-way movement, internal traffic calming devices, such as stop signs and islands, will be utilized. He then said that the proposed buildings have been adjusted to address the Division of Fire and Emergency Service's concerns regarding the turning radius near the bank drive-through, as well as the Division of Waste Management's concerns with the distance from the dumpster to the buildings.

Mr. Martin directed the Commission's attention to the revised recommendation that was previously distributed, and said that the staff is recommending approval of this request, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Discuss Resolve wording of note #17 and the need for additional timing information to address the timing of work in the regulatory floodplain, to the approval of the Division(s) of Water Quality, Engineering and Planning.
11. Discuss Denote location of need for pedestrian access to Bates Creek Road sidewalk, to the approval of the Bike & Pedestrian Planner.
12. Discuss Resolve extent of improvements to Wilson-Downing Road and need for additional island(s) to the approval of the Division of Traffic Engineering.

- ~~13. Discuss internal circulation conflict areas.~~
 13.14. ~~Discuss open~~ Denote ~~area~~ patio adjacent to proposed coffee shop as open space.

Mr. Martin reported that conditions #1 through #9 involve standard sign-off conditions from the different utilities and divisions of the LFUCG, and briefly explained that the remaining conditions are "cleanup" items. He said that, at the Subdivision Committee meeting, the applicant had agreed to provide a pedestrian access from the subject property to Tates Creek Road, as well as install a sidewalk on Tates Creek Road (condition #11). He then said that, since this property is surrounded by a floodplain, an emergency access to the site from Wilson-Downing Road will be required. Mr. Martin added that, in speaking with the Division of Traffic Engineering, there are many limitations pertaining to this area when it comes to the Wilson-Downing Road improvements, such as the bridge, the culvert under the bridge and the site itself. The applicant will need to address these limitations to the approval of Traffic Engineering (condition #12).

Mr. Martin continued, noting that seating drives the number of parking spaces that are required for a restaurant, and the staff wanted to ensure that the parking generator was correctly calculated. The applicant will need to denote that the patio next to the coffee shop will be open space only (condition #14); and lastly, the Technical Committee wanted the applicant to clearly denote how this site would function in terms of its timing and the work that will be done in the floodplain (condition #10). He indicated that a large amount of fill would be needed to raise the site elevations, to ultimately create an island. Proper access to this site will need to be addressed. He said that the applicant will need to comply with both federal and state requirements prior to them obtaining any local permits. He then said that note #17 on the final development plan (note #15 on the revised submission) relates to this development's timing relative to the regulatory floodplain, which is listed under Article 19 of the Zoning Ordinance.

In conclusion, Mr. Martin said that the staff is recommending approval of this request, subject to the revised conditions, as presented.

Representation – Matt Carter, Vision Engineering, was present, representing the applicant. He said that they are in agreement with the staff's revised recommendations and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy and carried 9-0 (Penn absent) to approve DP 2014-12: JAMES W. ATKINS PROPERTY, subject to the revised conditions, as presented by the staff, changing condition #10 to read: "Resolve wording of note #15 to address the timing of work in the regulatory floodplain, to the approval of the Division(s) of Water Quality, Engineering and Planning."

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Penn absent) to approve the release and call of bonds as detailed in the memorandum dated March 13, 2014, from Barry Brock, Division of Engineering.

V. STAFF ITEMS

The Infill & Redevelopment Facilitator is referring the following item to the Planning Commission in order to expedite the recordation of an I/R plan.

- a. PLAN 2013-122F: SOUTHEND PARK, UNIT 1, SECTION 1 (5/8/14)* - located in the 700/800 Block of De Roode Street. (Council District 3)
(Hall-Harmon Engineers)

Note: The plan was originally approved by the Planning Commission at its meeting on November 14, 2013. The applicant now requests a waiver of the Land Subdivision Regulations in order to modify the standard Engineer's Certification.

Staff Presentation – Mr. Martin presented the final record plat for Southend Park, Unit 1, Section 1, located in the 700/800 block of De Roode Street. He directed the Commission's attention to the rendering of this plat and oriented them to the surrounding area and street system. He said that the subject property is located along the Newtown Pike Extension and is part of the affordable housing component of the government project to extend Oliver Lewis Way.

Mr. Martin explained that the Urban County Engineer was in the process of reviewing the plat for the first section of this development; but during the review process, the Engineer's certification that is required by the Land Subdivision Regulations could not be completed. He said that this project is being overseen by the Kentucky Department of Transportation, not an individual engineer. To remedy this problem, the staff had suggested several options; but the

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best option would be to seek a waiver to Article 5-4(h)(2) of the Land Subdivision Regulations, which pertains to the required Engineer's and Surveyor's certification.

Mr. Martin explained that, by granting the requested waiver, it would allow the plat to be recorded, utilizing an amended Engineer's certification. He said that the staff is recommending approval of the requested waiver, for the following reasons:

1. Granting the waiver will not negatively impact public health and safety, as the completion of the public improvements have been completed according to the standard contractual procedures utilized and required by the applicant.
2. Granting the waiver complies with 1-5(c) of the Land Subdivision Regulations that encourages waivers that facilitate infill and redevelopment projects.
3. Not granting the waiver would constitute an exceptional hardship for the applicant by impeding and unnecessarily delaying the development of the affordable housing component of the project.

Representation – Andrew Grunwald, LFUCG Division of Engineering, was present, and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Blanton, seconded by Mr. Wilson and carried 9-0 (Penn absent) to grant the waiver to Article 5-4(h)(2) of the Land Subdivision Regulations, as presented by the staff.

VI. **COMMISSION ITEMS** – The Chair will announce that any item a Commission member would like to present will be heard at this time.

- A. **BOAR 2013-2: ALEX DONOGHUE** – an appeal of the denial of a Certificate of Appropriateness for changes to property located at 981-983 Fincastle Road.

The Staff Recommends: Disapproval, and that the decision of the BOAR be upheld, for the following reasons:

1. Denial of a Certificate of Appropriateness by the Board of Architectural Review for some of the proposed (as well as the already completed) changes is consistent with their charge in determining appropriateness of a request, based on the Design Guidelines established by the LFUCG Historic Preservation Commission. In this case, all of the Guidelines specifically cited by the Historic Preservation staff in its report to the BOAR are applicable, appropriate, and support the BOAR's decision to disapprove portions of the request.
2. One of the appellant's stated justifications for this appeal is the timing of the H-1 overlay designation relative to the changes to the property. However, the permit that was issued the same day as the actual implementation of the H-1 overlay (1/22/13) did not reference bricking in any openings – only replacement of windows. If closing/bricking in openings had been requested from Building Inspection at the time the building permit was issued, it would have been noted on the permit. Therefore, because there is no indication that that was part of the request, it can only be construed as not allowed/not grandfathered, although the replacement of windows was allowed; and that the work done by the appellant to brick in the windows and the other opening is in violation of the Design Guidelines, as well as the process.

Staff Presentation – Ms. Rackers stated that this is an appeal of the Board of Architectural Review's denial of a Certificate of Appropriateness for changes to property located at 981-983 Fincastle Road. She noted that this property is located in the Ashland Park Historic District, which was created by the Lexington-Fayette Urban County Council's approval on January 22, 2013.

Ms. Rackers directed the Commission's attention to the overhead projector, and said that the subject property is zoned R-2 and has traditionally been occupied as a duplex. She said that the applicant has indicated that this property would be converted to a single family residential home. She explained that this would not be an issue, since the surrounding area already has a good mixture of residential densities, including single family residential properties, duplexes and apartment buildings. As to whether or not this property is considered a duplex or a single family residential, that is not an issue.

Ms. Rackers directed the Commission's attention to an aerial photograph and said that the subject property is on the northeast side of the street and is the third house to the east from South Hanover Avenue. She explained that there are landscaped triangular shaped medians that are used as common areas for the neighborhood, and the subject property is one of three properties that face a similar median. She said that the residence is a 2-story brick structure that contains 2,842 square feet of living space that was divided into two 1,400 sq. ft. dwelling units. She then said that there is also a full basement that is 1,421 square feet in size. Ms. Rackers said that Historic Preservation had sent a Notice of Violation to the property owner, on June 26th, for work that had already been done. She provided a PVA photograph of the house and said that the photograph does show construction being done on the house, adding that the openings (door and windows) have been boarded up or bricked up, and the pediment over the door has been relocated to another door. She explained that this is a very complex case because of the timing of the work, the work that is being proposed, and the work already finished. She said that some of the aspects of the entire proposal were

found to be appropriate according to the adopted Design Guidelines; however, there are some aspects of the proposal that are not allowed by the adopted Design Guidelines, and were disapproved by the BOAR.

Ms. Rackers explained the timeline of this case, and said that the applicant had purchased the property on October 30, 2012, which was after the Planning Commission's approval of the H-1 Overlay (10-25-2012), but before the Lexington-Fayette Urban County Council's approval (1-22-2013). According to PVA records, the property did not change ownership until November 5, 2013. She then said that the applicant had worked with an architect to convert the structure from a duplex to a single family residence (11-5-2012 to 11-21-2012), as well as met with a Planning staff member, to discuss his intention to convert this house to a single family residence for a family member (October 25, 2013 and January 22, 2014). In order for the applicant to do the work he had planned, the staff advised him to obtain all applicable permits for the exterior changes to the property before the Historical Overlay went into effect. Ms. Rackers noted that the H-1 overlay has nothing to do with the interior changes and it does not regulate whether the property is single family residential or a duplex. She continued, noting that on December 11, 2012, the applicant had ordered replacement windows; and on January 22, 2013 a permit was issued through Building Inspection to replace multiple windows. She said that, when reviewing the submitted permit application, the items listed included the replacement windows, roof repairs, and replacement of deteriorating concrete and rotting wood. She then said that, since the application only stated replacement of the windows, that means the windows are only allowed to be replaced – not bricked in, as the applicant had done. She added that the wording on the permit mirrors what the permit application had stated. Ms. Rackers said that since the H-1 Overlay was approved later the same day as the permit was obtained, these three items were grandfathered with the property and are not part of this appeal. She said that the permit application or the permit itself did not mention bricking in the windows; and due to safety issues and the ability for egress, Building Inspection may or may not have allowed this proposal to be approved. That is unknown because it was not request, according to the permit that was issued.

Ms. Rackers said that the issues pertaining to this appeal include bricking in the windows; changing one front door opening to a window and bricking in the remaining space; moving the pediment/awning above that door to the side of the residence, to provide an overhang for a second existing door; installing shutters in closed position over the bricked in openings; and extending the front porch the length of the front of the residence. She added that many of these items are still only being proposed and have not taken place. She noted that the applicant had claimed that the order submitted to the window company was evidence of his intentions to brick in the remaining windows. However, there was no indication on the permit that his intentions were to brick in the remaining windows or close off the door. The permit only stated to replace the windows. She said that since the work was done after the H-1 implementation, that work could not be grandfathered in with the property. It was done in clear violation of the adopted Design Guidelines, as well as the BOAR process, and both Building Inspection's and the Historic Preservation's process in obtaining a permit before any construction begins.

Ms. Rackers directed the Commission's attention to the staff report and noted that the timeline has information that was supplied by the Historic Preservation staff and the applicant, as well as information that was not provided by either of them that was used merely to provide context. She explained that, according to the timeline, there was a clear indication that the applicant was aware of the H-1 process. The timeline also shows that there was communication throughout the entire time between the HP staff and the applicant, up until the case was placed on the docket to be heard by the BOAR on November 13, 2013. She said that, on the day of the hearing, the HP staff had received an email from the applicant stating that he may not be able to attend the hearing. The staff had responded that the meeting would likely run late and they would relay the applicant's message to the BOAR. However, since the deadline to hear this case was November 16th, it would be at the BOAR's discretion as to whether or not to postpone or hear his application and even though the applicant was not present at the meeting, the BOAR decided to move forward and hear his case. She said that the HP staff had presented their findings; and after some discussion between the BOAR members and the staff, it was determined that some aspects of the case were appropriate and in compliance with the adopted Design Guidelines, while some were in violation of the adopted Design Guidelines and disapproved by the BOAR.

Ms. Rackers said that there were 51 Guidelines that were cited in the staff's written report. Ten are particularly applicable to the work that had been completed without a COA, as well as the work that is still only proposed. Those ten Guidelines apply to the disapproved, as well as the approved portions of the proposal; but for today's hearing, only seven of those ten apply to the disapproved portion of the request, as that is the subject of this appeal. She said that, based on the findings, as stated in the staff report and the record of the public hearing, the Planning staff could find no flaws in either the BOAR's or the Historic Preservation staff's review and determination of appropriateness. It is consistent with their charge, which is to interpret and apply the adopted Design Guidelines in determining appropriateness of a specific request. She said that the staff recommends disapproval, and that the decision of the BOAR be upheld, for the following reasons:

1. Denial of a Certificate of Appropriateness by the Board of Architectural Review for some of the proposed (as well as the already completed) changes is consistent with their charge in determining appropriateness of a request, based on the Design Guidelines established by the LFUCG Historic Preservation Commission. In this case, all of the Guidelines specifically cited by the Historic Preservation staff in its report to the BOAR are applicable, appropriate, and support the BOAR's decision to disapprove portions of the request.
2. One of the appellant's stated justifications for this appeal is the timing of the H-1 overlay designation relative to the changes to the property. However, the permit that was issued the same day as the actual implementation of the H-1 overlay (1/22/13) did not reference bricking in any openings – only replacement of windows. If closing/bricking in

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openings had been requested from Building Inspection at the time the building permit was issued, it would have been noted on the permit. Therefore, because there is no indication that that was part of the request, it can only be construed as not allowed/not grandfathered, although the replacement of windows was allowed; and that the work done by the appellant to brick in the windows and the other opening is in violation of the Design Guidelines, as well as the process.

Planning Commission Questions – Ms. Blanton said that it is understandable why the applicant would not want two front doors. She asked if there are any circumstances that would be acceptable for a property owner to convert a second entryway to a window, as it does not seem to indicate in the adopted Design Guidelines that that is automatically the case. Ms. Kerr explained that the door was filled in to a window size opening without obtaining the permit, and there are situations when modifications are allowed. She said that, historically, when a structure is designed as a duplex, that feature is part of its architectural identity; and in terms of the adopted Design Guidelines, the goal is to keep a structure's architectural integrity intact. She then said that each case is different and it's common to have additional egress in the rear of the structure to a patio area; but the goal is to not negatively impact the architectural features of the structure. In this case, the two front doors are part of the structure's signature, and the removal of one is not allowed by the adopted Design Guidelines.

Historic Preservation Presentation – Ms. Armstrong submitted into the record the Certificate of Appropriateness application, the Board of Architectural Review minutes, Article 13 of the Zoning Ordinance (Historic Preservation section) and the Design Guidelines, as well as the minutes from the BOAR hearing. She presented several photographs to the Commission and gave a brief description of each (a copy of the mentioned items is attached as an appendix to these minutes). She requested that the Planning Commission uphold the BOAR's decision by disapproving this request, and this request is based upon the bricking in of all openings; the installation of the proposed closed shutters; the expansion of the front porch and the relocation of the entrance overhang.

Planning Commission Questions – Mr. Berkley asked when the plans were submitted to the staff. Ms. Armstrong replied that the applicant submitted those plans late October, 2012. Mr. Berkley then asked if the plans were or were not submitted during the time the applicant was obtaining the building permits, to which, Ms. Armstrong replied that she could not speak on behalf of Building Inspection, but she believed they were not. However, those were the plans presented to the BOAR members.

Appellant's Presentation – Alex Donoghue said that, when they purchased this property, the previous owner did not make them aware of any pending historical overlay going forward for this area. He said that he was later told to obtain the necessary permits before the property transitioned into an historic area. He added that, on January 22nd, he took his plans to Building Inspection and it was noted on the plan that the windows would be bricked in and the front door would be replaced with a window. He said that he could have gone into more detail when he filled out the application for the permit, but he was unfamiliar with the permitting process. He believed that the receipt he presented to the BI staff was sufficient enough because it showed the number of windows being replaced. He also believed that this was a good indication that the remaining windows would be bricked in. Mr. Donoghue explained that, after he obtained the permit, the side windows were bricked in and the brick from the rear, where the patio is located, were used for the front of the house. This was done because the rear brick would continue the brick pattern on the front of the house. He said that he had proposed to place shutters on the house; to cover the bricked in openings, but in speaking with the HP staff, they indicated that the intent is to maintain the historic fabric of the neighborhood, and shutters were not appropriate. Mr. Donoghue said that he took everything that the HP staff had said; and in turn, he was willing to retain the illusion of a duplex, which would keep the intent of its historical features; but he would close off the interior of the door, leaving the top portion of the door as a window. He then said that the door would not be operational inside, but it would be able to open from the outside to maintain the appearance of the original door. He added that, at that point, he did not want to remove the overhang because the HP staff said that it was an important feature to retain.

Mr. Donoghue said that out of the 51 issues there are only three concerns remaining: the two windows on the right side and one window on the left side. He then said that he had told the staff that he could take out the sills and replace the brick, making it appear that there were no windows on the house. He added that this was a duplex and the reason the windows were bricked in was due to the new interior layout of the house. He explained that the HP staff told him to make this a request, in the way he wanted to propose it and see what happens. Mr. Donoghue said that he could not attend the hearing and the Board went forward hearing this request, at which time they denied it. He then said that he is maintaining the front door and the overhang and the front porch is not expanding; and the windows that were proposed to be replaced have been replaced. He believed that this issue comes down to when he submitted his plans and the fact that he did not write "replace and fill in windows." He said that now the permit has expired and the work has been in a holding pattern.

Note: Mr. Owens departed the meeting at this time. Mr. Cravens chaired the remainder of the hearing.

Planning Commission Questions - Mr. Berkley asked if plans were submitted with the permit application. Alex Olszowy, Building Inspection, indicated that plans were not submitted for either the August 1st or January 22nd permit application. Mr. Berkley indicated that he had obtained permits in the past and he had to submit a site plan with his application. If he had not, then the permit would not be issued. Mr. Olszowy said that, when replacing windows,

submitting a plan is at the discretion of the plan reviewer. Mr. Berkley asked if Building Inspection would require an elevation plan for that level of work. Mr. Olszowy replied negatively, and said not for a pre-historic overlay house. He said that Building Inspection would not require structural plans if the work consisted of repairing or replacing sheeting, rafters or repairing concrete grade. He then said that they would not require a plan for replacing windows because the size of the opening is not changing. He added that unless the sizes of the openings were being enlarged, they would not require plans to be submitted.

Mr. Drake asked if the plans were submitted, as Mr. Donoghue had stated, showing the details he had claimed, if this would be an issue now or if it would be approved by Building Inspection. Mr. Olszowy said that, without the plans showing the full scope of the project, it would be questionable. He then said that when changing an egress element, such as a door or a bedroom window, it would be a permit issue for the staff. However, for a non-required element, such as a window over a countertop, it would not pose a code issue for the staff. He said that, during the review process, the staff would have noted the requirements to the applicant; and, according to the records, none of those items were discussed at that time. Mr. Drake then asked, with that information, the applicant would not have been approved to make the door appear operational, but close it off inside the house. Mr. Olszowy said that, since there are two doors, and one meets the requirements for egress, the staff would have approved his application for the door. He then said that the main door to the house and the bedroom windows are the two elements required by Building Inspection for egress purposes.

Ms. Blanton said that, in reviewing the permit application, under building plans someone had checked "other" and asked what that refers to. Mr. Olszowy said that he was not original plan reviewer and could not speak to that. He then said that there was nothing in the file other than the affidavits and workman's compensation information.

Staff Comment – Referring to Mr. Donoghue second email correspondence, Ms. Rackers clarified that, when she read the applicant's second communication to the staff, she misunderstood his intention and believed that the door he referred to was the upstairs door on the second floor, not the entrance door to the house.

Audience Comment – Mr. Cravens asked if anyone in the audience wished to discuss this request. John Rhorer, Historic Preservation Commission, was present. He said that he trusted the staff, the BOAR and the Planning Commission to determine what is appropriate as far as the adopted Design Guidelines were concerned. He then said that the Planning staff had determined that the judgment of the BOAR was correct in their decision, and according to the adopted Design Guidelines.

Mr. Rhorer said that the applicant, as well as others, had requested permits from Building Inspection on the same day as the Lexington-Fayette Urban County Council was hearing the H-1 Overlay request, which was fine, because at that time, they did not need to worry about the pending action from the Council. He noted that the applicant had requested the permit, it was issued by Building Inspection, and the application did only that it was stated to repair the roof, replace rotting wood and concrete on the porch and replace windows. He said that the applicant was fully aware what was going on with the H-1 Overlay request; and given those circumstances, one would think that when requesting a permit they would have been more careful as to how they completed the permit application, as well as to how the permit was written, in terms of what was allowed.

Mr. Rhorer said that the Historic Preservation Office comes across as being rigid and unhelpful to property owners; but for this case, the Planning Commission should look at the record. He then said that the BOAR approved the removal of a tree one month after the H-1 Overlay was approved. He added that the staff attempted to speak with the applicant numerous times, trying to be helpful and provide information concerning the H-1 District. He noted that the staff worked with the applicant and gave him information on what is and what is not allowed in a historic district. Mr. Rhorer said that even though the applicant did not appear at the BOAR hearing, the Board bent over backwards in discussing his case, making an effort to find a way to approve his request. However, in the end, the Board did approve some aspects that he requested. He then said that the HP staff did work with the applicant. There were no impediment placed in his way, other than the fact that the permit simply did not allow some of the construction he had started or finished.

Mr. Rhorer said that everyone is required to follow the rules; and if there is any tendency for the Commission to approve this request, which includes bricking in the windows or doorway because it has already been done, that is not in keeping with the process. He then said that if everyone asked for forgiveness after the act was done, rather than asking for permission for approval, we would be in a "heck of a state," especially for these types of issues. He asked, on behalf of the Historic Preservation Commission, that the Commission uphold the findings and ruling made by the BOAR by denying the applicant's request.

Staff Rebuttal – Ms. Rackers said that this appeal was based upon the case that was heard by the BOAR. In reference to the statements made earlier by the applicant, any other proposed changes will need to go through the process to be heard by the BOAR again. She said that his explanation of what he wants to do by way of a letter is not allowed and cannot be approved by the Planning Commission.

Applicant's Rebuttal - Mr. Donoghue said that he did not meet with Mr. Olszowy and he does not know the gentleman's name that reviewed his proposal. He explained that the reason the word "other" was checked on the

applications is because the elevations of the house were submitted not an actual plan. He added that Mr. Rhorer said that he submitted his application the very last day, but he did not know that this area was being turned into a historic district; and when he was told, he and his contractor contacted Building Inspection to take care of the permits. Mr. Donoghue said that when he was not approved by the BOAR, he wanted to meet with Ms. Rackers to discuss his proposal. He then said that Ms. Rackers had said that there was nothing to meet about regarding what he proposed to do; but he could send her an email, which he did.

Mr. Donoghue explained that he is retaining the character of a duplex, and all of these improvements and everything that has gone on was what the staff had asked that he do. He then said that there are three windows that have been bricked up; and he has offered to remove the sills and re-tooth those windows, making them appear as they were never there.

Mr. Donoghue said that the staff said that they had bent over backwards with this case, but he believes he has been jumping through hoops. He then said that, unfortunately, he did miss the meeting due to a family emergency; but he is doing everything that he had stated in the email sent to Planning staff, and he believed this was what the HP staff wanted. He added that it has always been his intention to brick up the windows and the receipt from the window company shows how many windows were going to be replaced. It was his belief that it comes down to the wording on the permit, and his proposal has not changed from the beginning or since this area was rezoned to a historic district.

Planning Commission Questions - Mr. Cravens asked when plans were filed with Building Inspection. Mr. Donoghue replied the 22nd, the day he received the permit. Mr. Cravens then asked if Building Inspection had this documentation in the file. Mr. Olszowy said that if the paperwork was submitted on an 8.5 x 11 sheet, then it would have been in the file; but if the paperwork was larger, then it would be in the plan review bin. He then said that he had texted the staff to look for the January plan submittals, but they did not find one for this case. Mr. Donoghue said that there were four 11 x 17 sheets submitted to the staff. Mr. Cravens asked if the applicant believed the permit he received was for all of the work. Mr. Donoghue replied affirmatively, and said that he was lucky to know someone who was familiar with the pending H-1 overlay. He then said that they had told him to obtain the permit for the work, which he did. He added that it was coincidental that it was the same day of the Council hearing.

Mr. Cravens asked if the BOAR had reviewed these plans. Ms. Armstrong replied affirmatively. Mr. Cravens then asked if the BOAR heard this case after January 22nd. Ms. Armstrong said that that was correct. Ms. Kerr said that they believed the work that was being done was covered under the grandfathered section of the permit. However, once it became apparent that the applicant was doing additional work not approved by Building Inspection, the staff sent a Notice of Violation to him. She then said that the HP staff encouraged him to come in and start the paperwork for the additional work that was not covered under the permit. She added that had the applicant stuck to the work that was approved by Building Inspection the HP staff would not have said anything. She also said that the staff had received plans starting in September, 2013 and the final plan was submitted in October, 2013.

Mr. Cravens verified that the applicant had presented the drawings to the Board, at which time his request was denied. Ms. Kerr said that the applicant had already started the work. Mr. Cravens then asked what the applicant was appealing to the Commission. Ms. Kerr said that the applicant was appealing the BOAR action for some of the work that had already been done that was in violation.

Mr. Berkley said that, at the time the applicant was obtaining the permits (in January), he was not required to give HP staff his plans because the H-1 Overlay was not yet approved by the Council. Mr. Kerr said that there was no reason for the applicant to give HP staff his plans before the district was rezoned. However, after the area was rezoned, people would not be able to obtain a permit until they received approval from the BOAR. She indicated that if the staff was aware of his intention, they would have informed him of this procedure; but there was no communication with the applicant until the Notice of Violation was sent.

Mr. Drake asked the applicant if he had legal counsel. Mr. Donoghue replied negatively. Mr. Drake then asked if he was a builder or a developer or had any experience with these types of issues. Mr. Donoghue replied that he is not and indicated that he was unfamiliar with the process in obtaining a permit. He then said that, as far as the timeline was concerned, there was no guarantee that Council would have approved the H-1 Overlay, and now the house has been sitting for awhile with no work being done. He claimed that the house is an eyesore to the neighborhood, and it is intended to be a single family dwelling unit, which is allowed in this zone.

Mr. Drake said that it was mentioned that the agencies have attempted to cooperate with the applicant; and he had no doubt about that. He also said that he sees an individual, with no experience, confronting these agencies and an entity that is supposed to be his assistant (government). He believed that there should be a way to relieve the tension between the government and citizens, removing the adversarial barriers that come up. He said that there is no doubt that mistakes have been made, but there should be a solution that satisfies the various interests without the parties being polarized.

Ms. Blanton agreed with Mr. Drake's comments; but in her opinion, the problem is that the Commission does not have much discretion when hearing these cases, and the Commission cannot come up with a solution. Ms. Rackers

said that the Commission does have the discretion to either uphold or overturn the BOAR's decision. She indicated that if the applicant wanted to make changes to this property, he would need BOAR approval, since it is in a Historic District. Ms. Blanton said that the Commission cannot overturn the BOAR findings just because the Commission doesn't like them, which Ms. Rackers confirmed. Ms. Blanton then said that the Commission's findings are based upon the rules that the Commission must follow. She added that, as much as she would like to help the applicant, the only thing the Commission can contemplate is whether or not bricking in the windows was included with the permit, which would then show his intent. She said that the applicant had stated that he included the larger documents with the paperwork, but the staff had indicated that the paperwork does not exist. She asked for clarification on Building Inspection's record keeping, and if it was unusual for a large document to be separated from its file. Mr. Olszowy said that part of the process includes submitting plans at the time of the permit application. He then said that if the plans are on an 8 x 11 sheet, it would be placed inside the file; but if the plans are on an 11 x 17 sheet, it is placed in the plan review bin according to the month it was submitted, until it is "closed." He added that, after the case is closed, those case documents are archived.

Mr. Cravens confirmed that the submitted plans were larger than an 8 x 11 sheet. Mr. Donoghue replied affirmatively. Mr. Olszowy said that, in speaking with the Building Inspection staff, they did not find Mr. Donoghue's plans in the plan review bin. Mr. Donoghue said that, it comes down to what his intent was for this property; and even though the staff did not find the submitted drawings, he had also submitted a receipt for the windows that is dated 12-11-2012. This was over a month before the Council acted on the historic overlay. He added that the only windows that were not on the receipt were the windows being bricked up. He said that, in an effort to please the staff, he agreed to change the front back to looking like a duplex.

Mr. Berkley said that the permit was issued to Troy Seal. Ms. Rackers said that Mr. Seal is the previous owner of the property. Mr. Cravens asked who filled out the application. Ms. Rackers said that the permit application was filled out by Mr. Donoghue, but the actual permit was obtained by Mr. Seal. Mr. Cravens said that the property owner's permission must be obtained to apply for a permit, which Ms. Rackers said that was the case.

Planning Commission Discussion - Mr. Drake asked, if the BOAR denial was upheld, what Mr. Donoghue was obligated to do. Ms. Jones said that, if the Commission upholds the BOAR denial, the applicant is obligated to comply with those terms of the BOAR decision. She then said that the BOAR decision did not include the second email Mr. Donoghue sent to Ms. Rackers. The information supplied in the email would have to go back to the BOAR as new information because it was not "on the table" during the hearing. Mr. Drake said that the bricked in windows were part of the BOAR's decision. Ms. Jones said that the applicant was issued a Notice of Violation because he was not in compliance with the H-1 Overlay guidelines. Mr. Drake asked if the applicant would need to remove the bricked in windows. Ms. Jones said that that would be a question of timing for the HP staff. She then said that if his intent was to go back in front of the BOAR in an effort to keep the windows bricked in, she did not know if he would have to remove those windows during that process. Ms. Kerr said that, once the BOAR has acted on an application, the same case cannot be reconsidered within one year of their action, unless that property owner or applicant has new evidence for the Board to weigh. She added that, at that time, the BOAR would determine whether or not there is sufficient evidence to reopen that case. She noted that the Board does not normally rehear a case; but with the applicant absent from the BOAR hearing and therefore unable to present his case, he would either need to wait a year or the Board would have to agree that there was new evidence to be revisited.

Ms. Mundy asked, since Mr. Seal had applied for the permit, if Mr. Donoghue could reapply for the same proposal. Ms. Kerr said that process demands for the current property owner to sign the permit application. She then said that, at that time, it was Mr. Seal. Ms. Mundy said that Mr. Donoghue's family is now the current property owner, and asked what would happen if Mr. Donoghue were to submit a new application. Ms. Kerr said that if the Board were to hear the same application within the same year, that could alter the BOAR's regulations, unless there is new evidence. She noted that a change in ownership does not override that rule. Ms. Jones said that she does not represent the BOAR and therefore could not address that question; but, in her opinion, that could be something to consider.

Mr. Wilson said that he does not like cases such as this one. He then said that there is a conflict between the process and the intent. The question is if the Commission upholds the BOAR's decision, then the next open question becomes whether the applicant can submit a new application and take it back to the Board.

Action - A motion was made by Mr. Wilson to uphold the BOAR decision and adopt the findings, for the reasons provided by the staff.

The motion failed due to the lack of a second.

Planning Commission Comments - Mr. Wilson asked if this could be postponed or continued one month to gather additional legal information. Mr. Cravens asked if Mr. Wilson was making a motion to continue this case. Mr. Wilson replied affirmatively. Mr. Drake asked what that means. Mr. Wilson said that the Commission would hear this case again next month. Mr. Cravens said that there needs to be a second before the motion can be discussed. Ms. Blanton seconded the motion in order for the discussions to continue. Mr. Drake asked for clarification as to the meaning of the motion. Ms. Jones said that the deadline for this case expires that day and could not be continued.

Mr. Wilson said that the Commission may have more cases such as this one; and it would be predicated primarily on the issue of process. He then said that the only thing the Commission does, as they represent the citizens of Lexington, is to protect the process by which the Commission does these things. With that being said, the process is not always good; but if the Commission does not do what they are supposed to do to protect the logical flow of process, it would open the Commission up to additional dialogue in other areas that potentially the Commission does not want to be involved with. He added that it seems that the process was followed to the degree that could be done on the side of an administration. He said that there was no proof of anything going back and forth, therefore, the question becomes whose word the Commission takes. He then said that he does not want to place the applicant in the position of proving everything, but it must be demonstrated that what is being done is in compliance with the regulations. He added that, in his opinion, the burden of proof seems to be on the applicant.

Ms. Plumlee said that the Commission wants to follow the process; but even after the process has been followed, it seems nothing happens even after hours of wrestling with a decision. She explained that, seventeen months ago, the Commission had made a decision to uphold the BOAR decision on the gazebo on Maxwell Street, but nothing happened. The gazebo is still there, and she asked, even if the Commission upholds the BOAR decision, what happens when there is no action to correct what has been wronged.

Mr. Cravens asked if can the applicant can request a continuance. Ms. Jones replied affirmatively. Mr. Donoghue said that he was fine with trying to work out these issues with the staff. Mr. Cravens said that the Commission has a motion on the floor to continue this item; but with the deadline being March 13th, the Commission cannot request a continuance. However, as the applicant, Mr. Donoghue can request a continuance. Ms. Jones clarified that should the Commission continue the hearing, the hearing being presented to the Commission today would be continued to the May meeting. She then said that the Commission cannot refer the case back to the BOAR. Mr. Donoghue asked, if the staff were to close out this case, and he submitted a new application, if the BOAR could change their decision; but as long as this case was open, nothing could be changed. Ms. Jones said that the BOAR will not have any more hearings on this case, while this appeal is pending. Mr. Donoghue said that the question would be whether or not the email that was submitted to the staff was sufficient to move forward in an effort to resolve these issues. He indicated to the Commission that he wanted something resolved.

Mr. Cravens asked what the purpose of continuing this case would be. Mr. Wilson said that the continuance is to know whether or not the applicant would need to wait one year before making a new application. He said that he did not want to close off Mr. Donoghue if that door could remain open with a continuance. Ms. Kerr said that once a decision is rendered by the Planning Commission; and if indeed it upholds the BOAR decision; the applicant can file new information with the staff, at which time the Board would review that information and make their decision as to whether or not that constitutes new evidence. If it is deemed that there is new evidence, the Board can elect to reopen the case. She said that she could not speak as to how the Board would go with that, but that is one mechanism in which this case could be considered for additional resolution. Mr. Drake asked what the timeline is for new evidence to be heard by the Board. She explains that BOAR cases are required to have legal notice advertised in the newspaper, and it would take at least 5 weeks for this case to be placed on the next available docket.

Ms. Blanton said that there is a motion on the floor and asked if she could withdraw her second or call the question for the members to cast their votes. Mr. Wilson said that if that is the case, he would withdraw his motion for a continuance.

Ms. Blanton said that she believed the applicant believed that he had the approval to make the changes he intended to do. She then said that it is not that she does not believe what the staff had stated; but had the original plan reviewer who took the application had testified, she would have weighed that testimony. She added that the plan reviewer is not present and the applicant is very adamant that he submitted the plan, which speaks to the intent of what he wanted to do prior to the H-1 Overlay being enacted.

Action – A Motion was made by Ms. Blanton to overturn the BOAR decision. The motion was seconded by Mr. Berkley.

Discussion of Motion – Mr. Wilson said that he would like to point out that ignorance of the law is no excuse. He then said that, if he was a brand new driver, without proper training, and he decided to disobey the laws, the officers would have the right to cite him for making the wrong choices relative to driving. He added that even though his intent would be good, even though his record would be great, and he was even a “straight A” scholar, intent (under the law) does not quite count.

Ms. Blanton agreed with Mr. Wilson’s comments; but if the applicant had come to the Commission and said that he didn’t know anything about the H-1 Overlay, he did all of this stuff, and to please forgive him and let him finish, she would have agreed. But for this case, the applicant didn’t fill out the paperwork correctly, and he probably believed that attaching the documentation to the permit application was sufficient to show the full scope of the work. Ms. Blanton said that it seems that they are getting bogged down with red tape, and it is different than ignorance. Mr. Wilson commented that he agreed.

Mr. Berkley said that, in his eyes, the process is too complicated and this is the reason that part of this had happened – that it was part of the problem. He then said that, as Ms. Plumlee had stated, nothing is being followed through on the process, and that should be reviewed as much as anything. He added that, for Mr. Donoghue to wait another 5 weeks, just to see if his case would be heard, did not seem reasonable to him.

Mr. Drake called the question.

The motion carried 7-1 (Wilson opposed; Brewer, Owens and Penn absent).

VI. **STAFF ITEMS** – No such items were presented.

VII. **AUDIENCE ITEMS** – No such items were presented.

VIII. **NEXT MEETING DATES**

Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	March 26, 2014
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	March 27, 2014
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	April 3, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	April 3, 2014
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	April 10, 2014

X. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 5:03 PM.

Mike Owens, Chair

Carla Blanton, Secretary